

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

v.

05-cr-08-jcs
09-cv-620-bbc

ANTHONY HOWARD,

Defendant.

Defendant Anthony Howard has filed a motion pursuant to 28 U.S.C. § 2255, in which he contends that his counsel was ineffective and that the trial court abused its discretion. (Because Judge Shabaz has taken senior status, I am handling his cases, including this one.) It is not necessary to determine whether defendant has any basis for his claims because he has waited too long to file the motion. Defendant was sentenced on July 13, 2005. The Court of Appeals for the Seventh Circuit affirmed defendant's judgment of conviction on July 21, 2006. Defendant did not petition for a writ of certiorari.

Under § 2255, defendant had one year from the date on which "the judgment of conviction [became] final" in which to bring a post conviction motion. The conviction would have become final 90 days after July 21, 2006, or October 26, 2006. Clay v. United

States, 537 U.S. 529-30 (2003) (one-year statute of limitations does not begin to run until 90 days after time for filing petition for writ of certiorari has expired, even if defendant does not file such petition). Therefore, defendant had until October 26, 2007, in which to file a § 2255 motion unless he fits within one of the special circumstances in which the time for filing is extended. Defendant has not alleged any facts from which an inference may be drawn that any one of those special circumstances apply in his case. Therefore, I conclude that his motion is untimely.

ORDER

IT IS ORDERED that defendant Anthony Howard's motion for post conviction relief, filed pursuant to 28 U.S.C. § 2255, is DENIED as untimely.

Entered this 9th day of October, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge